

In the Court of Appeals of the State of Alaska

Andrew J Dayton,
Appellant,

v.

State of Alaska,
Appellee.

Court of Appeals No. **A-13466**

Order

Motion for Waiver of Fees and Costs

Date of Order: **8/19/2019**

Trial Court Case No. **4FA-98-02438CR**

Andrew J. Dayton currently represents himself in this case. Although his pleadings are difficult to understand, it appears he is asking this Court to review the disposition imposed upon the revocation of his probation. He has also filed motions asking this Court to accept his late-filed pleadings, and to allow him to proceed at public expense.

Although Mr. Dayton was represented by an Assistant Public Defender in the underlying probation revocation proceedings, the trial court apparently allowed that attorney to withdraw after the trial court, finding that Mr. Dayton had violated his probation, imposed 245 days of previously suspended jail time. Based on Court View, and on the pleadings provided by Mr. Dayton, it is unclear why the Assistant Public Defender was allowed to withdraw.

Generally speaking, the Assistant Public Defender had an obligation to assist Mr. Dayton to ensure that he was aware of his right to seek appellate review of the superior court's decision (whether through an appeal or a petition), and if Mr. Dayton desired to seek appellate review, then the Assistant Public Defender representing Mr. Dayton (or another attorney from the Public Defender Agency) was required to ensure that an appeal or petition was filed. *See Harvey v. State*, 285 P.3d 295, 297 (Alaska App.

Dayton v. State - p.2
File No. A-13466
August 19, 2019

2012). (This Court recognizes that a different Assistant Public Defender was allowed to withdraw from Mr. Dayton's application for post-conviction relief, but that particular application for post conviction relief does not appear directly related to the probation revocation proceedings at issue in this current appellate action).

More importantly, considering that Mr. Dayton was entitled to the assistance of counsel at public expense during the probation revocation proceedings, then he normally would be entitled to the assistance of counsel at public expense during the appellate proceedings. *See* Appellate Rules 209(b) and 517.1, and Criminal Rule 39.

Because it is unclear — based on the pleadings filed by Mr. Dalton — why the trial court allowed Mr. Dayton's attorney to withdraw after the revocation of Mr. Dayton's probation, and because it appears that Mr. Dayton may still be entitled to the assistance of counsel at public expense in the current appellate proceedings, this Court must remand this case for further findings. (The Court also notes that nothing in the pleadings, or in Court View, indicates that Mr. Dayton provided a valid waiver of his right to counsel.)

Accordingly, IT IS ORDERED:

1. This case is remanded to the superior court to determine whether Mr. Dayton is still entitled to court-appointed counsel to assist him in the current appellate proceedings — that is, the proceedings arising from the revocation of Mr. Dayton's probation and the imposition of additional jail time. If Mr. Dayton is so entitled, then the superior court shall appoint counsel and direct that attorney to promptly file an entry of appearance with this Court. If Mr. Dayton is not so entitled, then the superior court shall make appropriate findings and inform this Court of these circumstances.

Dayton v. State - p.3
File No. A-13466
August 19, 2019

2. Mr. Dayton may also desire, if he has the means, to hire a private attorney to represent him. If this is the case, then the superior court will give Mr. Dayton 60 days to retain private counsel, and the superior court shall inform this Court of this circumstance.

3. The superior court's report on these matters shall be transmitted to this Court on or before September 16, 2019. This deadline can be extended for good cause.

4. Mr. Dayton's motion to proceed at public expense is **GRANTED**. Mr. Dayton's motion to accept his late pleadings will be **held in abeyance**, pending the superior court's report upon remand.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts



Kyle Roberts, Deputy Clerk

cc: Judge Matthew Christian
Central Staff

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